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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/006,773      | 12/10/2001  | Richard P. Junghans  |                     | 2051             |

7590 12/28/2004

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EXAMINER

HELMS, LARRY RONALD

ART UNIT PAPER NUMBER

1642

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/006,773

**Applicant(s)**

JUNGHANS, RICHARD P.

**Examiner**

Larry R. Helms

**Art Unit**

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-9 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

### **DETAILED ACTION**

1. Prior to setting out the restriction claims 8 and 9 are not included in the restriction because they are directed to non-statutory subject matter by including the term "use". It is not clear if the claims are directed to products, methods of expression or methods of treating or some other group.

2. It is also noted that although it appears that the application is in sequence compliance, it is requested that the SEQ ID NOs for those sequences in the Figures and in the claims be added to the Figures and the claims so a proper search can be performed upon election.

### ***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1, and 5-7 in part, drawn to a chimeric molecule binding to GD3 with variable sequences of the MB3.6 antibody, classified in class 530, subclass 387.3.
  - II. Claims 2, and 5-7 in part, drawn to a chimeric molecule binding to PSMA with variable sequences of the 3D8 antibody, classified in class 530, subclass 387.3.

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- III. Claims 3, and 5-7 in part, drawn to a chimeric molecule binding to PSMA with variable sequences of the 4D4 antibody, classified in class 530, subclass 387.1.
- IV. Claims 4, and 5-7 in part, drawn to a chimeric molecule binding to PSMA with variable sequences of the 3E11 antibody, classified in class 530, subclass 387.1.

4. The inventions are distinct, each from the other because of the following reasons:

Inventions I-IV are distinct because they bind different antigens and have distinct structures. In the instant case the antibodies of Group I bind GD3 while the antibodies of Groups II-IV bind PSMA. In addition, the antibodies of each Group are distinct because each antibody has a distinct amino acid sequence and a search of one antibody would not result in a search of the others. Thus, inventions I-IV are patentably distinct.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and different searches in the patent literature, restriction for examination purposes as indicated is proper.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry R. Helms, Ph.D, whose telephone number is (571) 272-0832. The examiner can normally be reached on Monday through Friday from 6:00 am to 3:30 pm, with alternate Fridays off. If attempts to reach the examiner by

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telephone are unsuccessful, the examiner's supervisor, Jeffery Siew, can be reached on (571) 272-0787.

7. Papers related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Fax Center telephone number is (571) 273-8300.

Respectfully,

Larry R. Helms Ph.D.

571-272-0832



LARRY R. HELMS, PH.D.  
PRIMARY EXAMINER